IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 140 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

HINDUSTAN CONSTRUCTION CO

Appearance:

1. INCOME TAX REFERENCE No. 140 of 1991

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the applicant- revenue, the following question of law is referred for the opinion of this Court:-

Whether, the Tribunal was right in law and on facts in holding that the "dumpers" were used as "earth moving machinery" by the assessee and entitled to depreciation at the rate of 30% ?

2. Heard Mr Manish R Bhatt, learned Sr. Standing Counsel appearing for the applicant- revenue. Nobody appears on behalf of the assessee.

The assessment years involved are assessment years 1982-83 and 1983-84.

3. Our attention is drawn to the decision of this Court in ITR No.164 of 1989 in the case of M/s. HMT Construction Co. wherein this Court has taken the view that the assessee was entitled to depreciation at the rate of 30% on the dumpers employed in its business of road construction.

Following the aforesaid decision, this Court has also decided the reference in the case of this very assessee for earlier assessment years and taken the same view.

4. We are, therefore, of the opinion that the Tribunal was right in holding that depreciation at the rate of 30% is available on dumpers and not at the rate of 15% as held by the Commissioner of Income-tax while passing the order under Section 263 of the Act.

We, therefore, answer the above question in the affirmative i.e. in favour of the assessee and against the revenue.

5. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-